SAPURA HOLDINGS SDN. BHD. & ANOR.

v.

NORTHERN TELECOM (ASIA) LIMITED & 2 ORS.

HIGH COURT MALAYA, KUALA LUMPUR
DATUK WIRA HJ. MOHD. NOOR BIN HJ. AHMAD J
[CIVIL NO. DI-22-436-94]
15 DECEMBER 1995

CIVIL PROCEDURE: *Appellants claiming damages for breach of contract - Appellants granted ex parte leave to issue notice of writ out of jurisdiction - Respondents' application to set aside grant of leave allowed - Appeal against decision - Whether issue of the writ and service of notice of the writ on the respondents proper - Consideration of O. 6 r. 6 of the Rules of the High Court 1980 - Whether there was compliance with O. 11 r. 6(4) of the RHC 1980 - Whether the appellants had discharged the minimum burden of satisfying the Court to grant leave to issue notice of the writ out of the jurisdiction as required under O. 11 RHC 1980.*

CIVIL PROCEDURE: *Rules of the High Court 1980 - Whether valid - Whether there was compliance with s. 6(b) of the National Language Act 1963/67 - Consideration of s. 7(2) of the National Language Act.*

The appellants filed an action claiming damages for breach of contract against the defendants. The appellants made an *ex parte* application to issue notice of the writ out of jurisdiction on the second and third defendants (the respondents), they being two firms in Canada, and the Deputy Registrar granted leave to the appellants. The respondents applied to set aside the order of the Deputy Registrar granting leave, which application was allowed, and the appellants appealed.

The respondents argued that no leave was obtained by the appellants to issue the notice of writ which was to be served out of the jurisdiction as required under O. 6 r. 6 of the Rules of the High Court 1980 (RHC 1980) and submitted that in the circumstances the issue of the writ was not proper. The respondents further argued that the service of the notice of the writ and the accompanying documents on the respondents was not proper as although the appellants had chosen to effect service through the Malaysian Consulate in Canada, they had failed to show that the person who effected service had the authority to do so from the Consulate. The respondents also questioned the validity of the service on the grounds that the notice of the writ in the English language text did not contain the certificate as required by O. 11 r. 6(4) and (5) RHC 1980.

The respondents also contended that the appellants had not discharged the minimum burden of satisfying the Court to grant leave to issue notice of the writ out of the jurisdiction as required under O. 11 RHC 1980 and relied on the fact that the appellants had failed to exhibit the relevant documents in the affidavit supporting the *ex parte* application for leave to issue notice of the writ out of the jurisdiction and that the statement of claim did not state in detail all the terms and conditions of the collateral agreement allegedly existing between the third defendant and the appellant.

During the course of the appeal, the appellant's Counsel, as *amicus curiae*, contended that the RHC 1980 was not valid because the Rules Committee made the Rules only in the English language and argued that in the circumstances there was non-compliance with s. 6(b) of the National Language Act 1963/67 (the Act) which requires the Rules to be made both in the National language and in the English language.

Learned Counsel further argued that notice of the writ was not valid on the ground that the English language text of notice of the writ was not sealed when it should have been.

Held:

[1] By reason of s. 7(2) of the Act, the provisions of s. 6 do not apply to the amendment of any written law enacted before 1 September 1967 until the written law has been translated into the National language and the translation has been prescribed to be authoritative. The Courts of Judicature Act 1964 (CJA 1964) is a written law enacted before 1 September 1967 which has not been translated into the National language through the legal process and the RHC 1980 were made under s. 17 of the CJA 1964. Therefore both laws fall within the ambit of the prescription by the Yang di-Pertuan Agong vide P.U. 32 dated 25 January 1968 whereby the text in the English language shall be authoritative. Furthermore as the RHC 1980 repealed the Rules of the Supreme Court 1957, the RHC 1980 is to be regarded as an amendment to the CJA 1964 because s. 3 of the Interpretation Act 1967 defines "amend" to include repeal.

[2] It is manifestly clear that s. 11 of the Act is only permissive. In the absence of any express provision, whenever a form in the English language is prescribed by any written law a translation in the National language by the person or the authority as prescribed by the Prime Minister may be used for all the purposes for which the form may, if in the English language, be used. However O. 92 r. 1 RHC 1980, which is mandatory, is an express provision to the contrary and in the absence of the authoritative text of Borang 11 in the Kaedah-kaedah Mahkamah Tinggi 1980, the deviation permitted by s. 62 of the Interpretation Act 1967 can be extended to the deviation from the language of the form in order to give effect to the mandatory provision of the RHC 1980 based on the

principle that Parliament does not enact in vain, as long as the deviation has no substantial effect and is not calculated to mislead. In the circumstances of the present case the deviation of the form from the English language text to the National language text has no substantial effect and is not calculated to mislead and therefore it is not necessary for the English language text of the notice of the writ to be sealed as the National language text of the notice was sealed.

[3] A scrutiny of the record reveals that although there is an application for leave of service of notice of the writ out of the jurisdiction, there was no application made by the appellants for leave to issue the writ notice of which was to be served out of the jurisdiction as required by O. 6 r. 6 and O. 32 r. 1 RHC 1980. In the circumstances the issue of the writ was not proper.

[4] As the service of the notice of the writ had been effected by an officer of the Canadian Government without any protest from that Government, it was reasonable to presume that the Canadian Government was willing to effect service and such service was not contrary to the law of Canada. In the circumstances the respondents arguments on the validity of the service was without merit.

[5] The provisions of O. 11 r. 6(4) & (5) RHC 1980 are mandatory and expedient in the interests of justice to enable the person on whom the notice is to be served to understand the contents of the notice and its implications and to be satisfied with its veracity. Notwithstanding the provisions of O. 92 r. 1, and applying the purposive rule of construction and the maxim *generalibus specialia derogant*, the proviso to O. 11 r. 6(4) still stands and must be complied with. Order 11 r. 6(4) is a special provision which excludes the operation of the general provision in O. 92 r. 1 RHC 1980 and as there had been non-compliance with the Rules, the service of the notice of the writ on the respondents was not proper.

[6] The appellants did not exhibit any of the relevant contract documents referred to in the statement of claim in the supporting affidavit and the statement of claim did not state in detail all the terms and conditions of the alleged collateral agreement. In the circumstances what was before the Deputy Registrar were merely facts based on scanty information deposed in the supporting affidavit. In the absence of any material to show that the contract was made within the jurisdiction or was governed by the laws of Malaysia the appellants had failed to demonstrate a good and arguable case and there was, therefore, insufficient evidence for the Deputy Registrar to exercise her discretion under O. 11 r. 4(2) RHC 1980.

[Appeal dismissed with costs].

Cases referred to:

Sunkyong International Inc. v. Malaysian Rubber Development Corporation Bhd. [1992] 2 MLJ 146 ***(refd)***

Tyne Improvement Commissioners v. Armement Anversois A/S (the Brabo) [1949] AC 326 ***(refd)***

Afro Continental Nigeria Ltd. v. Meridian Shipping Co. S.A. (the Vrontados) [1982] 2 Llyods Rep. 241 ***(refd)***

Metall Und Rohstoff AG v. Donaldson Lufkin & Jenrette Inc. [1989] 3 All. ER 14 ***(refd)***

Enichemanics S.p.a. v. Ampelos Shipping Co. Ltd. (the Delfini) [1988] 2 Lloyds Rep. 599 ***(refd)***

Vitkonic Horni A Hutni Tsirstvo v. Korner [1951] AC 869 @ 878

Legislation referred to:

Courts of Judicature Act 1964, s. 17

Interpretation Act 1967 ss. 2(i) (b), (e) 3, 8, 40(1), 62

National Language Act 1963/67, ss. 6(b), 7(2)

Rules of the High Court 1980, O. 6 r. 6, O. 11, rr. 1(1) (f)), 4(2), 6(2), (4), (5), O. 32 r. 1, O. 92 rr. 1, 2

For the appellant - Khairuzzaman Muhammad; M/s. Albar Zulkifly & Yap.
For the respondents 2 & 3 - Rabindra Nathan; M/s. Shearn Delamore & Co.

JUDGMENT

Mohd. Noor Ahmad J:

This is an appeal by the plaintiffs (hereinafter referred to as 'the appellants') against the decision of the learned Deputy Registrar whereby:

(i) leave to issue notice of the writ out of the jurisdiction granted to the appellants earlier for service on defendants 2 and 3 (hereinafter referred to as 'the respondents'), and

(ii) the service of notice of the writ on the respondents and all subsequent proceedings, were set aside.

Briefly, the facts reveal that the appellants filed an action claiming damages for breach of contract against the respondents (two firms in Canada) and defendant 1. The Deputy Registrar, on an *ex parte* application, granted leave to the appellants to issue notice of the writ out of the jurisdiction. The respondents applied to set aside the order of the Deputy Registrar granting the leave, and was allowed. Hence, this appeal.

In the course, of the arguments, the following were raised for my consideration:

(i) Whether the Rules of the High Court 1980 (hereinafter referred to as 'the Rules') is valid?

(ii) Whether notice of the writ is valid?

(iii) Whether the issue of the writ and service of notice of the writ on the respondents are proper?

(iv) Whether the appellants had discharged the minimum burden of satisfying the Court to grant leave to issue notice of the writ out of the jurisdiction as required under O. 11 of the Rules?

Re issue (i)

(1) As *amicus curiae* En. Khairuzzaman, the appellants' Counsel, contended that the Rules are not valid because the Rules Committee made the Rules only in the English language. The Rules in the national language text, that is to say, Kaedah-Kaedah Mahkamah Tinggi 1980 is merely a translation made through the administrative process by the Jabatan Peguam Negara (see PU (A) 98 of 26 April 1990). Therefore, there is no compliance with s. 6(b) of the National Language Act 1963/67, (hereinafter referred to as 'the Act') which requires the Rules to be made both in the national language and in the English language. The section provides:

> The texts:
>
> (b) of all Acts of Parliament and all subsidiary legislations issued by the Federal Government;
>
> shall be in the national language and in the English language ...

(2) My view is that the contention does not hold water because by reason of s. 7(2) of the Act, the provisions of s. 6 do not apply to the amendment of any written law enacted before 1 September 1967, until the written law has been translated into the national language and the translation has been prescribed to be authoritative. The Courts of Judicature Act 1964, is a written law enacted before 1 September 1967, which has not been translated into the national language, and the Rules were made under s. 17 of the Courts of Judicature Act 1964, which has not been translated into the national language through the legal process. Therefore both laws fall within the ambit of the prescription by the Yang di-Pertuan Agong *vide* PU 32 dated 25 January 1968, whereby the text in the English language shall be authoritative. Further, as the Rules repealed the Rules of the Supreme Court 1957, (applicable before the coming into force of the Rules) the Rules are to be regarded as amendment to the Courts of Judicature Act 1964, because s. 3 of the Interpretation Act 1967, defines "amend" to include repeal. The Interpretation Act 1967, applies in this case because the Courts of Judicature Act 1964, had been revised and the Rules were made after the commencement of the Interpretation Act 1967, (18 May 1967) (see s. 2(i)(b) and (e)).

Re issue (ii)

(1) En. Khairuzzaman also submitted that notice of the writ is not valid on the following grounds:

(a) the English language text of notice of the writ must be sealed. Whereas in this case two texts of notice of the writ were issued, one in the national language which was sealed and the other in the English language which was not. He contended that although O. 92 r. 1 of the Rules stipulates that any document requires for use in pursuance of the Rules shall be in the national language and may be accompanied by a translation thereof in the English language and that O. 92 r. 2 requires every document issued by the Registry for which a Form marked with the word 'seal' as prescribed in Appendix A must bear the seal of the Court, at this juncture all the Forms in Appendix A of the Rules, especially notice of the writ in Form 11 have not been translated by the person or authority as the Prime Minister may by order prescribe as required under s. 11 of the Act. That being the case, notice of the writ in the national language cannot be the authoritative text.

(b) the English language text of notice of the writ which was supposed to be the translation of notice of the writ in the national language was not certified by the person making it to be a correct translation and does not contain a statement of that person's full name, of his address and of his qualifications for making the translation, as required under O. 11 r. 6(5) of the Rules.

(2) I am of the opinion that notice of the writ in national language is valid.

Re ground (a)

Section 11 of the Act provides:

> Save as otherwise expressly provided, wherever a form in the English language is prescribed by any written law a translation thereof in the national language by such person or authority as the Prime Minister may from time to time by order prescribe may be used for all the purposes for which the form may, if in the English language, be used.

It is manifestly clear that this provision is only permissive, that is to say, in the absence of any express provision, whenever a form in the English language is prescribed by any written law a translation thereof in the national language by the person or authority as prescribed by the Prime Minister may be used for all the purposes for which the form may, if in the English language, be used. No doubt that at this juncture none of the forms prescribed in the Appendix to the Rules have been so translated and that the Kaedah-Kaedah Mahkamah Tinggi 1980 together with Borang-Borang thereto are not authoritative. However, by reason of the provision of O. 92 r. 1 of the Rules, which is mandatory and therefore the provision can be regarded as an express provision to the contrary within the meaning of the expression "Save as

otherwise expressly provided," appearing in s. 11 of the Act. Hence, I am of the view that the national language text of Borang No. 11 in Kaedah-Kaedah Mahkamah Tinggi 1980 can be resorted to. Order 92 r. 1 of the Rules reads:

> 1. Any document required for use in pursuance of these rules shall be in the national language, and may be accompanied by a translation thereof in the English language:
>
> Provided that any document in the English language may be used as an exhibit, with or without a translation thereof in the national language.

Further, I am fortified in my view by reason of s. 62 of the Interpretation Act 1967 which provides:

> 62. Any written law prescribing a form shall be deemed to provide that an instrument or other document purporting to be in that form shall not be invalidated by reason of any deviation from the form if the deviation has no substantial effect and is not calculated to mislead.

To my mind, because the provision of O. 92 r. 1 of the Rules is mandatory and in the absence of the authoritative text of Borang 11 in the national language, the deviation permitted by s. 62 of the Interpretation Act 1967, can be extended to the deviation from the language of the form in order to give effect to the mandatory provision of the Rules based on the principle that Parliament does not enact in vain, as long as the deviation has no substantial effect and is not calculated to mislead. Order 92 r. 1 of the Rules was amended by the Rules Committee in 1990 *vide* PU (A) 79/90 in order to give effect to the provisions of the Act, in particular to s. 8. Having scrutinized the contents of Borang No. 11 in Kaedah-Kaedah Mahkamah Tinggi 1980 and Form 11 in the Rules I am satisfied that *per se* they both convey the same meaning and therefore I conclude that the deviation of the form from the English language text to the national language text has no substantial effect and is not calculated to mislead.

Re ground (b)

It is true that the English language text of notice of the writ issued by the Registry does not bear the seal of the Court as required under O. 92 r. 2 of the Rules and that it does not contain the certificate as required under O. 11 r. 6(5) of the Rules (see encls. (9) and (10)). To my mind, the non-compliance does not affect the validity of its issue because, as I have said earlier, notice of the writ in the national language is valid since it was issued in accordance with law and which was sealed, as required under O. 92 of the Rules. However, in my view, the service of notice of the writ on the respondents is not proper by reason of the absence of the required certificate under O. 11 r. 6(5) of the Rules in the English language text of notice of the writ. This matter will be discussed under issue (iii) below.

Re issue (iii)

(1) En. Rabindra Nathan, the respondent's Counsel submitted that no leave was obtained by the appellants to issue the writ notice of which was to be served out of the jurisdiction as required under O. 6 r. 6 of the Rules which reads:

> 6(1) No writ notice of which is to be served out of jurisdiction shall be issued without the leave of the Court.

Therefore, the issue of the writ is not proper. I am in complete agreement with him. Upon a scrutiny of the record, although there is an application for leave for service of notice of the writ out of the jurisdiction (see encl. (2)), I am unable to discover any application made by the appellants for leave to issue the writ notice of which was to be served out of the jurisdiction as required by the aforesaid Order of the Rules and O. 32 r. 1 of the Rules.

(2) He also contended that the service of notice of the writ and the accompanying documents on the respondents is not proper for the following reasons:

(a) The appellants had chosen to effect service through the Malaysian Consulate in Canada. However, the service was effected on the respondents by a person by the name of Douglas Wahlberg. The appellants failed to show whether the person had the authority to do so from the Consulate but on the contrary the person merely produced his business card which did not indicate any reference to the Consulate.

(b) Notice of the writ in the English language text which is a translation of notice of the writ in the national language issued by the Registry does not contain the certificate as required by O. 11 r. 6(4) and (5) of the Rules.

Re reason (a)

To my mind, this reason has no merits. According to the Order of the Court of 6 May 1994, (enclosure (4) paragraph (iii)), the service was to be effected in Canada by the Malaysian Consulate in Canada. This was complied with (see eks. KZ-2, KZ-3, KZ-4, KZ-5 and KZ-6 of enclosure (14)). Douglas Wahlberg is a Sheriff's Officer with the Canadian Government. As O. 11 r. 6(2) of the Rules provides two alternatives for notice of the writ to be served, that is to say, through the Government of Canada, where it is willing to effect service or through the Malaysian Consulate in Canada, except where such service is contrary to the law of Canada, in my opinion service can be effected by the combined process of the two alternatives. I am fortified in my view by analogy to s. 40 (1) of the Interpretation Act 1967, which provides:

40(1) Where a written law confers a power on any person to do or enforce the doing of any act or thing, all such powers shall be understood to be also given as are reasonably necessary to enable the person to do or enforce the doing of the act or thing.

As the service has been effected by an officer of the Canadian Government without any protest from that Government, it is reasonable to presume that the Canadian Government was willing to effect service and such service was not contrary to the law of Canada.

Re reason (b)

Order 11 r. 6(4) requires, *inter alia*, that every copy of notice of the writ lodged in the Registry must be accompanied by a translation of the notice in the official language of the country in which service is to be effected. However, the proviso states that the translation is not required where the notice is to be served in a country the official language of which is, or the official languages of which include, English. And the translation must contain the certificate as stipulated in O. 11 r. 6(5) of the Rules. To my mind, the provisions are mandatory and expedient in the interest of justice to enable the person on whom the notice is to be served to understand the contents of the notice and its implications and to be satisfied with its veracity. The proviso or the exception was made because at that point of time every document required for use in our Courts was in English. However, when O. 92 r. 1 of the Rules was amended to provide every document required to be used under the Rules shall be in the national language, the Rules Committee did not consider the need to repeal the proviso; hence this lacuna arises now. Notwithstanding the provision of O. 92 r. 1, in my view, applying the purposive rule of construction and the maxim *generalibus specialia derogant* and the proviso still stands and must be complied with. O. 11 r. 6(4) is a special provision which excludes the operation of the general provision in O. 92 r. 1 of the Rules. There are ample authorities which state that the rules of Court must be complied. Further, as service of judicial process in a foreign country is an exercise of sovereignty in that country, such non-compliance cannot be lightly regarded (see *Sunkyong International Inc. v. Malaysian Rubber Development Corporation Bhd*. [1992] 2 MLJ 146 @ 151 para. D). As there had been non-compliance with the Rules, I conclude that service of notice of the writ on the respondents is not proper.

Re issue (iv)

(1) En. Rabindra Nathan contended that the appellants had not discharged the minimum burden of satisfying the Court to grant leave to issue notice of the writ out of the jurisdiction as required under O. 11 of the Rules, in particular rr. 1(1) (f) and 4(2), on the following grounds:

(a) the appellants had failed to exhibit the relevant contract documents (which were referred to in their pleadings) in the affidavit supporting the *ex parte* application for leave issue notice of the writ out of the jurisdiction (encls. (1) and (2)).

(b) the statement of claim does not state in detail all the terms and conditions of the collateral agreement which allegedly existed between defendant 3 and plaintiff 1 made through B. Beneteau and Tan Sri Dato Shamsuddin bin Abdul Kadir.

(2) There are several authorities to support the proposition that the Court must be cautious before granting leave to issue notice of the writ out of the jurisdiction because the jurisdiction conferred by service out of the jurisdiction is anomalous, and the very words which describe it portray that it is a departure from the jurisdiction recognised by the comity of nations and an invasion of the sovereignty of the state within which leave to serve is granted. (See *Sunkyong International Inc. v. Malaysian Rubber Development Corporation Bhd. supra, Tyne Improvement Commissioners v. Armement Anversois A/S (the Brabo)* [1949] AC 326 @ 357; *Afro Continental Nigeria Ltd. v. Meridian Shipping Co. SA (the Vrontados)* [1982] 2 Llyods Rep. 241 @ 245 left]. Therefore, before leave is granted it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the Jurisdiction under O. 11 r. 1(1), in particular para. (f), which is relevant here.

Rule 4(2) states:

> No such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this order.

Paragraph (f) provides:

> Where the writ does not contain any claim for damage, loss of life or personal injury arising out of:
>
> (i) (not relevant)
>
> (ii) (not relevant)
>
> (iii) (not relevant)
>
> service of a notice of a writ out of the jurisdiction is permissible with the leave of the Court in the following cases, that is to say:
>
> ...
>
> ...

(f) if the action begun by the writ is brought against a defendant to enforce, rescind, dissolve, annul or otherwise affect a contract, or to recover damages or obtain other relief in respect of the breach of a contract, being (in either case) a contract which:

(i) was made within the jurisdiction; or

(ii) (not relevant);

(iii) by its terms, or by implication, governed by the law of Malaysia;.

(3) What I have to consider now is whether on the facts submitted by the appellants in the *ex parte* application and in the statement of claim leave ought to have been granted by the Deputy Registrar. It was necessary for the Deputy Registrar, without trying to determine the merits of the action, to consider all the relevant documents even though that might involve some investigation (see *Tyne Improvement Commissioners v Armement Anversois S/A (the Brabo) supra* @ 340). It was the duty of the appellants to satisfy the Court that they had a good arguable case for the relief sought (see *Metall Und Rohstoff AG v. Donaldson Lufkin & Jenrette Inc.* [1989] 3 All ER 14; *Enichemanics S.p.a. v. Ampelos Shipping Co. Ltd. (the Delfini)* [1988] 2 Lloyds Rep. 599 and *Tyne Improvement Commissioners & Armement Anversois S/A (the Brabo) (supra)*. The appellants must exhibit the contract documents referred to in their pleadings. The burden was not on the respondents to deny the contracts or to satisfy the Deputy Registrar that the appellants had no cause of action against them, especially when the application was made and heard *ex parte*.

(4) In a nutshell, the appellants based their claim against the respondents on a co-venturing agreement allegedly to be effective from 1979 until it was unlawfully terminated by the respondents and defendant 1 on 19 April 1994, in Kuala Lumpur. Under the agreement the parties agreed to distribute, sell and service in Malaysia a telecommunication system known as the PABX system manufactured by defendant 3. The arrangement which existed until 1984 was based mainly on the representations (enumerated in para. 5.3 in the statement of claim) allegedly to have been made by one B. Beneteau, an agent of the respondents, to Tan Sri Dato' Shamsuddin b. Abdul Kadir the executive chairman of plaintiff 1 during several discussions. Thereafter, the arrangement was continued under several written agreements as spelt out in para. 6 of the statement of claim. It is true, as contended by En. Rabindra Nathan, that the appellants did not exhibit any of the relevant contract documents referred in the statement of claim in the supporting affidavit and the statement of claim did not state in detail all the terms and conditions of the collateral agreement allegedly arose out of the said representations to the executive chairman of plaintiff 1 by the agent of the respondents. Nowhere

was it stated that (1) the discussions that give rise to the said representations took place in Malaysia and (ii) the relevant contract documents referred to in the statement of claim were executed in Malaysia. What were before the Deputy Registrar were merely facts based on scanty information deposed in the supporting affidavit. It was held in the *Delfini* case *supra*, that the practice of serving an affidavit on the basis of scanty information and waiting to see if the jurisdiction is challenged is not satisfactory and should be discontinued. In *Vitkovic Horni A Hutni Tsirstvo v. Korner* [1951] AC 869 @ 878 Lord Simmonds said:

> As Lord Davey said in *Chemische Fabrik Vormals Sanoz v. Badische Anilin und Soda Fabriks*, 'This (i.e. r. 4 does not, of course, mean that a mere statement by any deponent who is put forward to make the affidavit that he believes that there is a good cause of action is sufficient ...

What the appellants should have done to exhibit the relevant contract documents in the supporting affidavit, which they could have done since the documents must have been in their possession, and to state categorically that all or any of the discussions which gave rise to the said representations took place in Malaysia. In which event, it would be decisive that the contract was made within the jurisdiction or by its terms or by implications, governed by the law of Malaysia. In the absence of such material before the Deputy Registrar, my view is that the appellants had failed to demonstrate a good arguable case and therefore, there was insufficient evidence for the Deputy Registrar to exercise her discretion under O. 11 r. 4(2) of the Rules. No doubt that the activities under the alleged co-venturing agreement were carried out in Malaysia. However, it could not be safely construed that the contract, by its terms, or by implications, was governed by the law of Malaysia because in the absence of the contract documents the Deputy Registrar could not scrutinize and determine for herself whether:

(i) there was any clause which stipulated the applicable law,

(ii) there were other obligations which might or were required to be performed in another place other than Malaysia.

To summarize:

Issue (i), the Rules of the High Court 1980 is valid.

Issue (ii), notice of the writ is valid.

Issue (iii), the issue of the writ is not proper and the service of notice of the writ on the respondents is also not proper.

Issue (iv), the appellants had not discharged the required burden.

Therefore, the appeal is dismissed with costs.